

1989

Provo City v. Ken Sorensen : Brief of Appellant

Utah Court of Appeals

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Vernon Romney; Provo City Attorney.

Ken Sorensen; Pro Se.

Recommended Citation

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UTAH COURT OF APPEALS
BRIEF

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890417-CA

IN THE UTAH COURT OF APPEALS

DOCKET NUMBER

89 0 417 - CA

Brief of the Appellant

APPEAL

Appeal from the Fourth Circuit Court
State of Utah, Provo, Dept. Judge Sumsion

Vernon Romney
Provo City Attorney

Ken Sorensen
Representing Himself

Classification
Priority No. 14 b

FILED

JAN 18 1990

COURT OF APPEALS

LIST OF PARTIES

1. Ken Sorensen	Appellant
2. Christine Sorensen	Witness
3. John D. Christofferson	Arresting Officer
4. Doug Bushfy	Back - Up Officer
5. Sgt. Richard Healey	Communication Officer
6. Vernon F. Romney	Provo City Attorney
7. Robert J. Sumsion	Judge

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Table of Authorities or Citations

Statement of Christine Sorensen	Affidavit
Compulsory Disclosure,	(Fed. R. Civil P. 26,37,45 Fed. R. Crim P. 16,17)
Freedom of Information Act	5 v. S. C. A. 552
Fraudulent Concealment	Fundunburns V Michigan MNJ Liability Co. 63 Mich App 405 234 N. W. 24 545. 547
41-6-66	Turning - Manner - Traffic Control Devices
41-6-69	Turning or Changing Lanes - Safety - Signals- Stopping or Sudden Decrease of Speed - Signal Flashing - Where Prohibited.
41-6-70	Signals - Methods
76-5-304	Unlawful Detention
41-2-603	Non Resident Violation

Jurisdiction Statement

A. Notice of Appeal was filed with the Utah Court of Appeal on June 26, 1989 and the docketing statement was accepted by that Court of Appeals, location in Salt Lake City, Utah, in this matter for a review as provided in Rule 56(b) of the Utah Rules of Civil Procedure.

Nature of Issue

This Appeal is from a final Judgement of the Fourth Circuit Court of the State of Utah after decision by Court Judge Robert J. Sumsion on June 26, 1989 in a traffic matter and defined as a "Improper Turn". Citation issued for 41-6-66 "Turning manner - Traffic - Control Devices, amended to 41-6-69 turning or changing lanes - Safety Signals - Stopping or sudden decrease in speed-Signal flashing where prohibited. 41-6-70 Signals - Methods was probably the more proper charge for the alleged violation.

Statement of Issues: and Statutes of Ordinances

1. Citation for "Left Signal" 41-6-66
2. Citation amended in Court to 41-6-69
3. Defendant not given additional time to prepare defence for 41-6-69, not proper code violation for alleged violation.
4. Officer fail to follow procedure for issuing a traffic citation to a non-resident violation 41-2-603
5. Unlawful detention 76-5-304
6. Judge directed defendant to instal illegal and unauthorized mechanical device on automobile
7. Final decision referees to "Def. Guilty Improper Turn"
8. City Police refused to give Appellant access to radio log and Police records

STATEMENT OF CASE:

The Petitioner was the driver of the 1983 DeLorean on January 28, 1989 at 1230 A.M. When I was stopped by Provo City police officer John Christofferson ID #052 at 500 South and North University Avenue. Also present was my wife Christine Sorensen and a back up officer whose identity is unknown to me.

Officer Christofferson approached the car while shining his flashlight inside and asked me if I knew why he had stopped me. I said "no". He stated that I had failed to make a left turn signal. I advised him that this was untrue. He took my Drivers License and Vehicle Registration and went back to his car.

During the time the officer was in his patrol car my wife and I discussed the matter. She advised me that she could hear the flasher making its usual clicking sound and could see the green light flash on the dash.

When the officer returned I advised him that I had properly used the turn signal and my wife confirmed that I had. Officer Christofferson advised us that he was going to give me a warning ticket, however if I was going to argue, he would just give me a ticket. He then returned to his car.

My wife Christine was scheduled for back surgery the following week to help her recover from an automobile accident which had occurred some four months prior. She was in a considerable amount of pain. We were hurrying home so that she could take a pain pill. The officer had been in his car, on the radio, for what seemed like five minutes.

I got out of my car and approached the police car of officer Christofferson and advised him of my wife's problem while suggesting that if the writing of the ticket was going to require some more time to call an ambulance to take my wife the one block home, or that I would take her there, so that she could take her pain pill.

Officer Christofferson apologized for taking so long and agreed to follow us to our temporary residence, at 131 E. 500 S. in Provo.

Officer Christofferson advised me since I was from Oregon that I would be required to post bail. He put me in the back of patrol car and hauled me to the Provo Police Station where I posted the \$41.00 bail. I was then driven home.

Upon reaching my apartment officer Christofferson advised me that he had stopped me because I had an expensive car and he was in the

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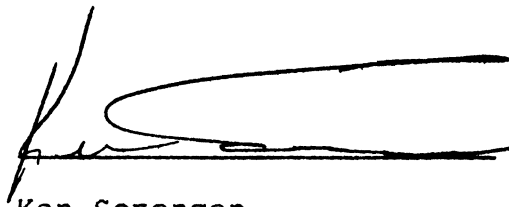
habit of stopping such cars to see if the driver "went with the car".

I asked him if he had any reports of a stolen DeLorean and he said "no". I advised him I would be happy to appear at the officer's meeting with my I.D. so as to avoid being harassed again.

I asked officer Christofferson to help me check the turn signal but he refused to do this and left.

The day after the incident I checked the turn signal and found it to working. A few days later I checked it again and found the turn light nd the outside stop light to not be working. The DeLorean had two brake lights on each side of the car with a total of 3 brake lights working. I disassembled the left tail light unit and found a crack in the circuit board I ordered a replacement and corrected the problem.

This statement is true and correct to the best of my belief and knowledge.

1-15-90 Date
Ken Sorensen

COURSE OF PROCEEDINGS;

The citation # A699096 reads "No Left Turn Signal" code "41-6-66" However in court officer John Christofferson stated "for an improper turn". Later he stated "No Signal" When petitioner asked Officer John Christofferson what code 41-6-66 was he stated that is was the code he issued the citation against. After petitioner pointed out the mistake Judge Sumsion continued with questioning and allowed Prosecutor Rommey to look up the correct code and make a motion to amend the citation to read 41-6-69 and passed the mistake as a "clerical mistake". The petitioner made a motion for dismissal or al least an extension of time to prepare a defence. Judge Sumsion grants the Prosector motion to continue. The Judge, Prosecutor and the Officer conspired against the appellant and failed to follow Rule 7 of the Utah Rules of Civil Procedure and violate the Applicants Civil Rights.

The pretext stop Officer John Christofferson stated he was in the habit of stopping expensive cars to see if the drivers go with the cars. There is no Federal, State law or City ordinance that gives a peace officer such authority. If he is suspicious of a driver he must use the PRETEXT of a light out or "turn signal" or any ligament violation to make a stop. The turn signal was not checked by Officer Christofferson to confirm if it was working or not. The appellant checked the left light signal the following morning and found it was working properly. The appellant's wife and passenger

on the night of the stop stated in court she had seen the flashing green turn signal indicator on the DeLorean's instrument panel and also heard the click of the flasher modula locator behind the passenger's seat. Officer Christofferson admitted to Appellant his habit of stopping expensive cars to see if the drivers went with the cars. He admitted this under oath on page 12 line 1-2-3-4-5-6- & 7 of the trial transcription. When Officer Christofferson admitted to the Appellant of his practice of stopping cars to "see if the drivers went with the cars" he was overheard by Christine Sorensen, see affidavit of Christine Sorensen.

Unlawful Detention Utah Code 76-5-304

(1) A person commits unlawful detention if he knowingly restrains another unlawfully so as to interfere substantially with his liberty.

(2) Unlawful detention is a Class B Misdemeanor

Officer John Christofferson did restrict Appellants movement by his pre-text stop. Thereby interfering substantially with Ken Sorensen and Christine Sorensen Liberty. Appellant is the owner of a ranch in Oregon and has been a license driver # 4099591 in that state since 1983.

Forcing Appellant to post bail Officer John Christofferson forced Ken Sorensen to go the Police Station in Provo to post \$45. bail.

This was illegal pursuant to Utah Code 41-2-603 "Procedure for Issuing a Traffic Citation to a non-resident violator"

41-2-603 PROCEDURE FOR ISSUING A TRAFFIC
CITATION TO A NONRESIDENT VIOLATOR.

The following is the procedure of the issuing jurisdiction:

(1) When issuing a citation for a traffic violation, a peace officer shall issue the citation to a motorist who possesses a driver license issued by a party jurisdiction and shall not, subject to the exceptions noted in Subsection (2), require the motorist to post collateral to secure appearance if the officer receives the motorist personal recognizance that he or she will comply with the terms of the citation.

(2) Personal recognizance is acceptable only if not prohibited by law. If mandatory appearance is required, it must take place immediately following issuance of citation.

The Appellant was never asked for his personal recognizance, whereas being the owner of a \$35,000. car should have been a clue to Officer Christofferson as to his worth and should have received the benefits of 41-2-603 of the Utah Code.

DISCLOSURE: The appellant believes the radio log of the Provo Police on the morning of January 29, 1989 will reveal a radio conversation between Officer Christofferson and the duty Sergeant directing a conspiracy and harassment of the Appellant. Ken Sorensen has contacted the Provo Police communication department and discussed the matter of releasing the information with Sgt. Healey. He advised Sorensen the tapes were confidential and were not subject to public scrutiny. Sgt. Healey advised that if the Appellant was successful in obtaining a court order to hear the tapes they could disappear and to transcribe them would be very expensive. This is fraudulent concealment. Appellant did not have enough time to obtain a subpoena to transcribe the information if he was successful in obtaining it.

Incompetency (RCP-25) of Prejudicial(RCP-63) of Judge Robert J. Sumsion or lack of ability, legal qualifications or fitness to discharge the required duty is in question.

1. He was incompetent (RCP-25) by his own admission to rule on a mechanical default and did not possess the ability to consider relevant evidence.

2. Failed to consider fair preponderance of evidence (RCP-63) by ignoring defendants witness statement as to confirming the turn signal was working - See trial transcription page 21 line 2 through 13.

3. Judge Robert J. Sumsion advised the Appellant to "Rig up some kind of Rue-Goldberg device on the driver's side of the car that will let you signal, if the lights won't work". Trial transcription page 29 line 8-9 & 10. The Utah Code 41-6-70 refers to Hand & Arm or lamp turn signal, no "Rue-Goldberg Device." Utah Code 41-6-117 states Federal Motor Vehicle Safety Standards, again no mention of a "Rue-Goldberg Device".

Safety -Under a contributing negligence case a driver needs only show reasonable safety, showing that the Defendant's act in turning was as a matter of law, it did not cause any hazard to safety or result in any damage.

Summary and Detail of Argument

Officer John Christofferson made pre-text stop because he thought he may have a drunk driver. When this proved untrue he was prepared to issue a warning citation to cover himself. When confronted by the pre-text stop he called his duty Sergeant and was advised to issue a citation under 41-6-66 Turning, Manner, Traffic control device and because the Appellant was from out of town bail would be required, contrary to Utah Code 41-2-63 and unlawful detention Utah Code 76-5-304 Making Officer Christofferson and the duty Sergeant guilty of a Class B Misdemeanor. Judge Robert J. Sumsion displayed incompetency as described in RCP-25 or prejudice in RCP-63. He admitted he did not understand circuit boards. It doesn't take a metal giant to understand the workings of a circuit board and you don't need to possess the technical ability to build one. The Rub-Goldberg os a totally insane statement for a Judge to make. Though the street had no turn markings, only a tow away lane the turn was executed by the Appellant in a safe manner with the turn signal switch properly positioned in the left turn. If the turn signal had a temporary failure as circuit boards can, the Appellant should have been issued a fix-it citation and not have been put up to the public ridicule of being hauled to the Police Station in the back seat of a Police car.

Citation or previous cases are non existent , it has cost the Appellant some \$200. in expenses plus \$500. in time to pursue the

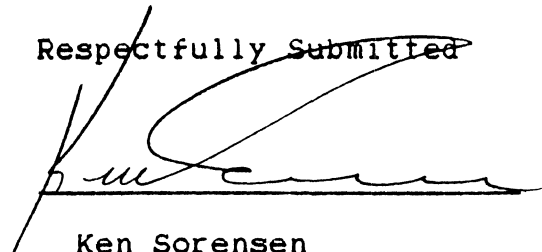
non just treatment of the City of Provo and the Circuit Court for a \$41. fine. Provo City has further attempted to hide and cover up conspiracy by refusing to release or allow Appellant to review radio log or watch report.

Conclusion and Relief Sought

Officer Christofferson created the situation and he used his authority as a peace officer unjustly, unwisely and not in the public interest and was aided by his Duty Sergeant, Prosecuting Attorney and the Judge.

Defendant/Appellant respectfully requests that this court dismiss Plaintiff/Respondents final judgement and order the /city of Provo to investigate conspiracy of the Police Department Prosecuting Officer and Judge Robert J. Sumsion and that the city of Provo be ordered to remove the citation from the Appellant's driving record and further pay the Appellant costs and reasonable attorney fees, together with that which the court deems Just and Equitable.

Respectfully Submitted


Ken Sorensen

1-14-1990

Date

P. O. Box 50331

Provo, Utah 84606

IN THE UTAH COURT OF APPEAL

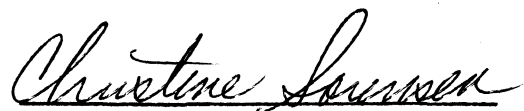
Kennith Sorensen)	Affidavit of
Petitioner)	Christine Sorensen
)	in Appeal to Decision
)	to no left turn signal
Provo City)	
Respondent)	

State of Utah)	
)	SS.
County of Utah)	

I Christine Sorensen, being first duly sworn upon oath, depose and say:

- 1) I make this affidavit on personal knowledge. I was a passenger in the 1983 DeLorean on January 28, 1989 at 1220 and my husband Kennith Sorensen was driving.
- 2) We were stopped by a Provo police officer, John Christofferson, who stated that my husband failed to use a left turn signal.
- 3) The DeLorean's turn signal flasher unit is located in the storage shelf in back of the passenger seat. The noise it makes has always been annoying to me. I could hear the unit click when Kennith turned the signal on when turning from University Avenue North onto 500 South.
- 4) From the passenger seat I could see the green light of the left turn signal on the instrument panel flash as Kennith turned the signal on when turning from University Avenue North onto 500 South.
- 5) I have been very jumpy since being hit by a car where the driver ran a stop sign and because of this I watch other people's driving very closely.
- 6) I was scheduled for back surgery the week after this incident took place. I had forgotten to take a pain pill with me and was in a great amount of pain at the time of the stop, by officer Christofferson.
- 7) After officer Christofferson had driven me the one block home. I had went for a short walk to help the pain pill work and was in the parking lot at our apartment when officer Christenson brought Kennith home. I overheard the officer state that he would level with Kennith, he had stopped us to see if we went with the car.
- 8) These statements and facts are true and correct to the best of my knowledge and belief.

Dated this 16th Day of July 1989


Christine Sorensen

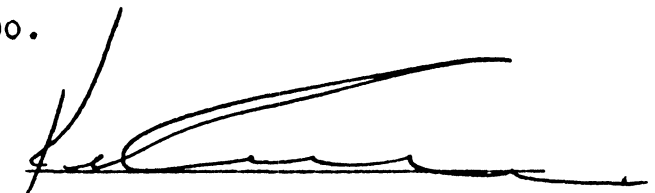
CERTIFICATE OF MAILING

I hereby certify that I mailed two (2) copies of the foregoing
briefs by depositing the same in the United States mail: postage
prepaid to the following:

Vernon Romney
Attorney For City of Provo
P. O. Box 1849
Provo, Ut. 84603

Unable to mail on January 15, 1990, whereas it was a legal holiday
and the Post Office was closed.

Dated this 16th day of January 1990.



Ken Sorensen